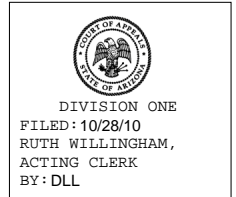


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



CONI CASSIERO,) No. 1 CA-IC 10-0003
)
Petitioner,) DEPARTMENT C
)
v.)
) **MEMORANDUM DECISION**
THE INDUSTRIAL COMMISSION OF) (Not for Publication -
ARIZONA,) Rule 28, Arizona Rules
) of Civil Appellate
Respondent,) Procedure)
)
SEDONA OAK CREEK UNIFIED SCHOOL)
DISTRICT,)
)
Respondent Employer,)
)
ARIZONA SCHOOL ALLIANCE,)
)
)
Respondent Carrier.)
_____)

Special Action - Industrial Commission

ICA Claim No. No. 20082-270412

Carrier Claim No. 2008014579

Administrative Law Judge Robert F. Retzer

AWARD AFFIRMED

Coni Cassiero
Petitioner *In Propria Persona*

Sedona

The Industrial Commission of Arizona
By Andrew F. Wade, Chief Counsel
Attorney for Respondent

Phoenix

Jardine, Baker, Hickman & Houston, P.L.L.C.
By K. Casey Kurth
Attorneys for Respondent Employer
Sedona Oak Creek Joint Unified School District

Phoenix

D O W N I E, Judge

¶1 This is a special action review of an Industrial Commission of Arizona ("ICA") award and decision upon review, finding petitioner, Coni Cassiero, without permanent injury and her condition medically stationary. Cassiero challenges the administrative law judge's ("ALJ") resolution of conflicting medical evidence. Because the award and decision upon review are reasonably supported by the evidence, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 In June 2008, while Cassiero was employed as a payroll manager for Sedona-Oak Creek Joint Unified School District, she injured her neck, back, face, and wrists when she fell walking up a flight of stairs. She filed a workers' compensation claim and soon thereafter began receiving treatment from Dr. David Leheneauer, a chiropractor. From June 2008 until January 2009, she received treatment from Dr. Leheneauer several times per week. Her claim was closed in February 2009, after it was determined that she had no permanent impairment and that no additional supportive care was necessary. Cassiero appealed the decision and requested a hearing.

¶13 At the ensuing hearing, Terrence Montgomery, a nurse practitioner who is board certified in family practice, testified. He opined that Cassiero suffered from significant weakness in her wrists, which included a loss of grip and some loss of range of motion. He diagnosed Cassiero with "pain in the limbs" and recommended further treatment and evaluation by an orthopedist or a hand specialist. Montgomery explained that his findings were "subjective," as he did not conduct an electromyogram or take x-rays. Instead, he measured Cassiero's grip strength by having her encircle his fingers with her hands and squeeze. He admitted that a physical therapist or an orthopedist could render a "more clinical diagnosis."

¶14 Kevin Ladin, M.D. is board-certified in physical medicine, rehabilitation, and pain management. Dr. Ladin examined Cassiero and reviewed her medical records. He testified that Cassiero "characterized herself as being impaired in essentially every area of her life," though "her findings on examination were essentially normal." Dr. Ladin did not observe any "pain related behaviors." A "focused examination of her neck and back and upper extremities showed virtually no abnormal findings whatsoever. She had a full range of motion."

¶15 Using a Jamar® dynamometer, Dr. Ladin tested

Cassiero's grip strength three separate times.¹ The grip strength on her left hand registered as two, zero, and zero, respectively; her right-hand grip strength was two, zero, and one, respectively. Dr. Ladin testified that the scores of zero were not physiologically based. Such scores occur when a patient has "provided virtually no effort whatsoever," or the patient is paralyzed. He diagnosed Cassiero with muscular strain of the neck, upper back, and wrists, and concluded that her condition was stationary and did not require further treatment.

¶16 The ALJ found Dr. Ladin's opinions "most probably correct and well founded." Cassiero was awarded benefits from June 2008 until February 2009. The award was affirmed in a December 17, 2009 decision upon review.

¶17 We have jurisdiction over Cassiero's timely petition for special action pursuant to Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(2) (2003), 23-951(A) (1995), and Arizona Rule of Procedure for Special Actions 10.

DISCUSSION

¶18 Cassiero argues that the ALJ erred in finding that she did not require further treatment. She contends that the

¹ The test requires a patient to grip the device as hard as he or she can; an analog gauge measures the amount of force exerted by the patient.

conflicting medical opinions should have been resolved in her favor.

¶9 We consider all of the evidence in the light most favorable to sustaining an award by the ICA and will uphold the decision if there is reasonable evidence to support it. *Jaramillo v. Indus. Comm'n*, 203 Ariz. 594, 596, ¶ 6, 58 P.3d 970, 972 (App. 2002). We do not reweigh the evidence. *Id.*

¶10 Competing medical testimony was presented at the hearing. Dr. Ladin opined that Cassiero's condition was stationary and that she was no longer in need of medical support. In contrast, Mr. Montgomery recommended further treatment and evaluation by a specialist. Mr. Montgomery, however, qualified his recommendation by stating that his evaluation of Cassiero's condition was based solely on subjective testing.

¶11 The ALJ found Dr. Ladin's testimony "most probably correct and well founded." "It is the ALJ's responsibility to resolve conflicts in the medical evidence, and we will not disturb that resolution unless it is 'wholly unreasonable.'" *Gamez v. Indus. Comm'n*, 213 Ariz. 314, 316, ¶ 15, 141 P.3d 794, 796 (2006) (citation omitted). Moreover, the credibility of witnesses is a matter peculiarly within the province of the trier of fact in an administrative matter. *Anamax Mining Co. v. Ariz. Dep't of Econ. Sec.*, 147 Ariz. 482, 486, 711 P.2d 621, 625

(App. 1985). Because reasonable evidence supports the ALJ's finding, we uphold the decision.

CONCLUSION

¶12 For the reasons stated above, we affirm.

/s/

MARGARET H. DOWNIE, Judge

CONCURRING:

/s/

MAURICE PORTLEY, Presiding Judge

/s/

PATRICIA A. OROZCO, Judge